

§ 18b.23

For requirements of service on amici curiae, see § 18b.76.

§ 18b.23 Service; how made.

Service shall be made by personal delivery of one copy to each person to be served or by mailing by first-class mail, properly addressed with postage prepaid. When a party or amicus has appeared by attorney or other representative, service upon such attorney or representative, will be deemed service upon the party or amicus. Documents served by mail preferably should be mailed in sufficient time to reach the addressee by the date on which the original is due to be filed, and should be airmailed if the addressee is more than 300 miles distant.

§ 18b.24 Date of service.

The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of its delivery, or of its attempted delivery if refused.

§ 18b.25 Certificate of service.

The original of every document filed and required to be served upon parties to a proceeding shall be endorsed with a certificate of service signed by the party making service or by the party's attorney or representative, stating that such service has been made, the date of service, and the manner of service, whether by mail or personal delivery.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

TIME

§ 18b.26 Computation.

In computing any period of time under the rules in this part or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sun-

38 CFR Ch. I (7-1-12 Edition)

days, and legal holidays shall be excluded from the computation.

§ 18b.27 Extension of time or postponement.

Requests for extension of time should be served on all parties and should set forth the reasons for the application. Applications may be granted upon a showing of good cause by the applicant. From the designation of a presiding officer until the issuance of a decision such requests should be addressed to the presiding officer. Answers to such requests are permitted, if made promptly.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

§ 18b.28 Reduction of time to file documents.

For good cause, the reviewing authority or the presiding officer, with respect to matters pending before them, may reduce any time limit prescribed by the rules in this part, except as provided by law or in part 18 of this chapter.

PROCEEDINGS BEFORE HEARING

§ 18b.30 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing to an affected applicant or recipient, pursuant to §§ 18.9 and 18a.5 of this chapter.

§ 18b.31 Answer to notice.

The respondent, applicant or recipient may file an answer to the notice within 20 days after service thereof. Answers shall admit or deny specifically and in detail each allegation of the notice, unless the respondent party is without knowledge, in which case the answer should so state, and the statement will be deemed a denial. Allegations of fact in the notice not denied or controverted by answer shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure of the respondent to file an answer within the 20-day period following service of the notice may be deemed an admission of

Department of Veterans Affairs

§ 18b.37

all matters of fact recited in the notice.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

§ 18b.32 Amendment of notice or answer.

The General Counsel may amend the notice of hearing or opportunity for hearing once as a matter of course before an answer thereto is served, and each respondent may amend the answer once as a matter of course not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of the original answer. Otherwise a notice or answer may be amended only by leave of the presiding officer. A respondent shall file the answer to an amended notice within the time remaining for filing the answer to the original notice or within 10 days after service of the amended notice, whichever period may be the longer, unless the presiding officer otherwise orders.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

§ 18b.33 Request for hearing.

Within 20 days after service of a notice of opportunity for hearing which does not fix a date for hearing the respondent, either in the answer or in a separate document, may request a hearing. Failure of the respondent to request a hearing shall be deemed a waiver of the right to a hearing and to constitute consent to the making of a decision on the basis of such information as is available.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

§ 18b.34 Consolidation.

The reviewing authority may provide for proceedings in the Department of Veterans Affairs to be joined or consolidated for hearing with proceedings in other Federal departments or agencies, by agreement with such other departments or agencies. All parties to any proceeding consolidated subsequent to service of the notice of hearing or opportunity for hearing shall be served with notice of such consolidation.

§ 18b.35 Motions.

Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing, these matters shall be in writing. If made at the hearing, they may be stated orally; but the presiding officer may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Motions, answers, and replies shall be addressed to the presiding officer, if the case is pending before the officer. A repetitious motion will not be entertained.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

§ 18b.36 Responses to motions and petitions.

Within 8 days after a written motion or petition is served, or such other period as the reviewing authority or the presiding officer may fix, any party may file a response thereto. An immediate oral response may be made to an oral motion.

§ 18b.37 Disposition of motions and petitions.

The reviewing authority or the presiding officer may not sustain or grant a written motion or petition prior to expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting response: *Provided, however*, That prehearing conferences, hearings and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately. Motions and petitions submitted to the reviewing authority or the presiding officer, respectively, and not disposed of in separate rulings or in their respective decisions will be deemed denied. Oral arguments shall not be held on written motions or petitions unless the presiding officer in the officer's discretion expressly so orders.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]